

ITEL

July 11, 1988

8-197A030
No. JUL 15 1988

Date

Fee \$ 13.00

ICC Washington, D.C.

Hon. Noretta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC 20423

Ite Rail Corporation

55 Francisco Street
San Francisco, California 94133
(415) 984-4000

1 5731

RECORDATION NO. _____ FILED 1280

JUL 15 1988-11 11 AM

INTERSTATE COMMERCE COMMISSION

Re: Lease Agreement dated as of December 1, 1987, between Ite
Railcar Corporation and Canadian Pacific Limited

Dear Ms. McGee:

On behalf of Ite Rail Corporation, the above instrument, in four (4) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13 recordation fee.

Please record this Lease Agreement under a new recordation number.

The parties to the aforementioned instrument are listed below:

Ite Railcar Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133

✓ Canadian Pacific Limited (Lessee)
P.O. Box 5042, Windsor Station
Montreal, Quebec H3C 3E4
Canada

This Lease Agreement covers ninety-nine (99) 50'6", 70-ton boxcars bearing reporting marks CPAA 208775-208873.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker
Patricia Schumacker
Legal Department

PS:
Enclosures

OFFICE OF
SECRETARY
JUL 15 11 02 AM '88
MOTOR OPERATING UNIT

Interstate Commerce Commission

Washington, D.C. 20423

OFFICE OF THE SECRETARY

Patricia Schumacker

Itel Rail Corporation

55 Francisco Street

San Francisco, CA 94133

7/15/88

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/15/88 at 11:10AM, and assigned re-cordation number(s). 15731 & 15483-A

Sincerely yours,

Nanta L. McEneaney

Secretary

Enclosure(s)

4/29/88

LEASE AGREEMENT

Lease Agreement made as of December 1, 1987, between ¹ 5731

RECORDED 50 JUL 15 1988 11 44 AM

ITEL RAILCAR CORPORATION

(hereinafter called the "Lessor")

INTERSTATE COMMERCE COMMISSION

and

CANADIAN PACIFIC LIMITED

(hereinafter called the "Lessee")

APPROVED
AS TO FORM

H.C.W. (4)

1. **SCOPE.** Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, ninety-nine (99) Cars of the description set forth on the attached Exhibit A. "Cars" shall mean all the boxcars subject to this Lease Agreement and "Car" shall mean an individual boxcar subject to this Lease Agreement. It is understood that the Cars will be imported into Canada to allow for their domestic use.

2. **TERM.**

(a) The term of this Lease Agreement with respect to each Car shall commence December 1, 1987, and, unless earlier terminated in accordance with paragraph 8, shall terminate on December 31, 1996 ("Lease Term").

(b) Lessee shall have the right, exercisable by written notice to Lessor at least 120 days prior to the end of the initial term hereof and provided all terms and conditions have been met and there are no defaults, to renew this Lease Agreement for one renewal period of up to seven (7) years upon the same terms and conditions contained herein except the rentals payable during this renewal period shall be \$160 per Car per month payable in arrears in U.S. Dollars, with maintenance expense, insurance, taxes and other expenses related to the operation of the Cars for Lessee's account.

3. **DELIVERY AND ACCEPTANCE.** Since the Cars are currently in service with Maryland and Pennsylvania Railroad Company in a Lease Agreement which is being simultaneously cancelled with the execution of this Lease Agreement, Lessee hereby stipulates that the Cars are in good operating condition in accordance with AAR rules and regulations and are delivered and accepted "as is, where is".

4. **RENTALS.**

(a) Lessee shall pay a rental of _____ per Car per month (U.S. Dollars) payable monthly in arrears to Lessor for the first month period of the Lease Term; thereafter, Lessee shall pay a rental of _____ per Car per month (U.S. Dollars) for the remainder of the Lease Term ("Base

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Rental"). Base Rental shall be subject to an increase each year as provided in Section 4(d).

(b) Payment of Base Rentals shall be due on the last day of the month in which the Lease commenced and the last day of each month thereafter. The first month's rental will be prorated for the number of days the Lease was in effect, if it was less than a full month. Any rentals in default due Lessor shall be subject to an interest rate of 1% per month.

(c) If the Cars, in the aggregate, travel on average in excess of 20,000 miles per Car per calendar year beginning with the calendar year commencing January 1, 1988, Lessee shall pay Lessor (U.S.) per mile for any total actual miles in excess of (miles times (x) the number of Cars in service during the year) ("Excess Mileage Fee"). The Excess Mileage Fee is in addition to any other rentals in 4(a) and shall be computed within 120 days after the end of each calendar year and will be treated as additional rent.

(d) The Base Rental payment will be increased annually as a result of inflation by an amount determined by the following formula:

$$\begin{array}{rcl} \text{Increase in} & & \text{AAR Labor Rate} \\ \text{Monthly Base Rental} - & (\text{U.S.}) & \text{as of January 1} \\ \text{Payment Per Car} & \times & \text{of each year} \\ & & \hline & & \text{AAR Labor Rate as} \\ & & \text{of January 1, 1987} \end{array}$$

(e) Total Rentals shall be the sum of 4(a), 4(c) and 4(d) ("Total Rentals").

(f) There shall be no Canadian Federal or Provincial income tax withheld by Lessee except as herein provided. Lessee shall withhold, on account of Canadian Federal Income Tax a maximum of ten percent (10%) of any Total Rentals to the extent that the Total Rentals are deemed to be Canadian sourced income to Lessor. Lessee shall provide Lessor with adequate documentation pertaining to the use of the Cars outside of Canada which Lessor may require to apply for any potential refunds of Canadian Federal Income taxes permitted under the Canadian Tax regulations. Any increase in Canadian Federal Income Tax above 10% shall be for the account of Lessee.

5. MARKINGS; RECORD KEEPING; AND INSPECTION.

(a) In connection with the importation of the Cars for Canadian domestic service, Lessee shall cause each Car to be restenciled, at Lessor's expense, subject to Lessor's prior approval of such expense, with Lessee's running marks and such other insignia as Lessee has requested, if required. Lessee represents to Lessor that the markings and other insignia do currently comply and at all times during this Lease Agreement will comply with all applicable regulations and AAR rules.

(b) Lessor and Lessee have caused each Car to be registered in the Official Railway Equipment Register and the Universal Machine Language Equipment Register, and any change therein must be mutual. Lessee shall maintain such records and submit such reports, including car hire and

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maintenance expense accounting, as shall be required from time to time by any applicable regulatory agency or any AAR railroad interchange agreement or rule. Lessee shall separately keep and maintain records of payments, maintenance, repairs, other credits and charges, and the number of days the Cars were in the United States on a Car by Car basis, all in a form suitable for reasonable inspection by Lessor. Lessee shall summarize such records and supply them to Lessor on an at least once monthly basis. Lessee shall promptly forward to Lessor any correspondence relating to any Car.

(c) Lessor, its officers, employees and agents, shall have reasonable access to the physical inspection of Cars or records pertaining thereto upon prior written notice to the Chief Mechanical Officer or Chief of Transportation depending upon the nature of the inspection. Lessor agrees that it shall not unreasonably interfere with the Cars' movement as a result of any such inspection. Lessee shall immediately notify Lessor of any accident involving any Car or of any attempt to attach, seize or sell any Car, giving Lessor such details as Lessor shall reasonably request.

6. MAINTENANCE, TAXES AND INSURANCE

(a) All repairs (other than repairs caused by the use of the Cars in violation of this Lease Agreement), whether on or off Lessee's trackage, shall be at Lessor's expense for the initial twelve (12) months of the Lease; thereafter, all repairs (other than repairs caused by the use of the Cars in violation of this Lease Agreement), whether on or off Lessee's trackage, shall be at Lessor's expense except for Excluded Repairs, as hereinafter defined, which such Excluded Repairs shall be at Lessee's expense. As used herein "Excluded Repairs" will include all work performed under AAR Rule 77 - Door and Door Parts, Job Codes 4500 through 4544, and doorway areas including labor, parts and securement covered under Job Codes 4099, 4204, 4404, 4450, 4490 and 4800 as described by twenty-five (25) applicable car part identification codes "LG" through "ME", "QR" and "ZF" per Rule 83. Further, it is agreed that any future revisions to the AAR Rules and/or Car Part Codes and Job Codes related to door, doorway area and door parts, their maintenance, repair or replacement, shall be incorporated into the Lease Agreement as such changes become effective. Any invoices received by Lessee for any repairs, other than Excluded Repairs after the initial twelve (12) month period, shall be promptly forwarded to Lessor for its payment in U.S. funds at the then current rate of exchange. Lessee shall promptly give Lessor written notice of the need to repair a Car (other than running repairs and/or Excluded Repairs) when on Lessee's trackage or of which Lessee has notice from another railroad of the need to perform maintenance thereon, but shall not perform or cause to be performed any repairs (other than running repairs and/or Excluded Repairs) or maintenance without Lessor's prior consent. Upon Lessor's instructions, Lessee will bill a Car to a repair shop on or off Lessee's trackage for any such repairs, maintenance or modifications. The repair shop shall be designated by Lessor and Lessee agrees to move Cars free of charge on Lessee's trackage. All transportation costs off Lessee's trackage shall be for the account of Lessor; provided, however, if any Car is deemed by Lessor to be uneconomical to repair, Lessor may terminate this Lease as to that Car. Lessor may substitute a replacement Car of similar specifications.

(b) Lessee shall not make any alteration, improvement or addition to any Car without the prior written consent of Lessor thereto. Any alteration, improvement or addition made to a Car shall become the property of Lessor upon installation without any need to reimburse Lessee therefor.

(c) Lessee shall be responsible for any damage or destruction occurring to any Car while on its trackage or under its control. Lessee shall promptly pass through to Lessor any settlement received by it as the result of any damage to or destruction of a Car. All settlements for damage to or destruction of any Car occurring on or off Lessee's property shall be in accordance with and on at least as favorable terms as those set forth in the Field Manual of the AAR Interchange Rules, and shall be in U.S. Dollars. Such settlement payments are in addition to any Rental payments that may be due and payable on such Car(s).

In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange rules and Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations - Freight, the Lease Agreement with respect to said Car shall terminate upon payment of settlement funds to Lessor in accordance with the Rules cited in this Section and the Total Rental Payments with respect to said Car shall cease on the date car hire ceased as set forth in the aforementioned Rules 7 and 8. Lessor may, at its expense, replace any destroyed Car with similar equipment upon prior written notice from Lessor to Lessee.

(d) Lessee shall be responsible for the filing and payment of all taxes, assessments and other governmental charges of whatsoever kind or character which may be accrued, levied, assessed or imposed during the Lease Term and which relate to the operation and use of any Car, except taxes on income imposed on Lessor. Lessee will pay any tax, duty or customs charges in connection with importation of the Cars into Canada for use of the Cars in domestic Canadian service.

(e) The parties acknowledge that Lessee intends to be self-insured as to the Cars during the term of this Agreement. Should Lessee carry any insurance policies covering the Cars, Lessor shall be named an additional insured.

7. USE OF CARS.

(a) So long as Lessee shall not be in default under this Lease Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Lease Agreement. It is understood that Lessor has granted or will grant to the owner of the Cars or to lenders an assignment of Lessor's rights, title and interest under this Lease as collateral for certain obligations of Lessor to such owners. Lessee shall not assert against such assignee any defense, counterclaim or set-off that Lessee might have against Lessor. Upon giving of notice to Lessee from any such assignee that an event of default by Lessor has occurred and is continuing with respect to Lessor's obligations to such assignee, assignee may at its option require that all payments otherwise due Lessor shall be made directly to such party. Lessee shall accept and comply with the direction or demands given in writing by such assignee. *ful*

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Upon giving of notice to Lessee from any such transferee, bank, financial institution or secured party that an event of default by Lessor has occurred and is continuing under such financing agreement or arrangement, such party may, at its option, require if such rights have been granted by Lessor to such party, that all payments otherwise due to Lessor shall be made directly to such party.

(b) It is agreed that Lessee shall keep the Cars in a service which preserves the Cars in Class A condition (per AAR Rule 1, Paragraph 7). Lessee shall not change such loadings by it without Lessor's consent. If damage results from any changes in loadings as provided in this Section, Lessee shall be responsible for damage resulting from such loadings.

(c) While on its trackage or under its control, Lessee shall maintain the Cars in good operating condition. Lessee agrees that, to the extent it has physical possession or can control the use of any Car, such Car shall be used and operated in compliance with the laws of the jurisdiction in which it is located and with all lawful acts, rules, regulations and orders of any governmental bodies or offices having power to regulate or supervise the use of that Car, except that Lessee may in good faith and by appropriate proceedings or other reasonable manner, not jeopardizing the ownership, use or operation of that Car, contest the application of such act, rule, regulation or order at its expense. Lessee shall operate the Cars in accordance with its management practices as to railroad cars of its ownership. Lessee shall not assess any storage charges on the Cars while the Cars are subject to this Lease Agreement.

(d) Lessee shall not directly or indirectly create or allow to exist any claim, lien, security interest, or encumbrance with respect to any Car, and shall promptly discharge the same should it arise.

8. SUBSTITUTION OF CARS. Lessor shall have the right at any time and from time to time to substitute one or more boxcars of similar design, age and quality upon at least 60 days' notice thereof, all at the expense of Lessor both for the displaced Car and its replacement. The parties shall cooperate with each other to effectuate such substitution at a mutually agreeable point without unduly burdening Lessee's operation hereunder. Upon such substitution this Lease Agreement shall terminate as to the Car being substituted for, and the boxcar substituted in place of that Car shall thereupon become a "Car" for all purposes of this Lease Agreement.

9. DEFAULTS AND REMEDIES.

(a) Any of the following events shall constitute an event of default:

- (i) nonpayment when due of any amount required to be paid by Lessee;
- (ii) failure to promptly redeliver any Car required to be returned to Lessor hereunder;

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- (iii) failure to cure a breach by Lessee of any material term, covenant or condition within 30 days of such breach;
- (iv) the Lessee shall: (i) file a voluntary petition in bankruptcy or file a voluntary petition or an answer or otherwise commence any action or proceeding seeking reorganization, arrangement or readjustment of its debts or for any other relief under the Federal Bankruptcy Code, as amended, or under any other bankruptcy or insolvency act or law, State, Provincial, or Federal, Canadian or U.S., now or hereafter existing, or consent to, approve of, or acquiesce in, any such petition, action or proceeding; (ii) apply for or acquiesce in the appointment of a receiver, assignee, liquidator, sequestrator, custodian, trustee or similar officer for it or for all or a substantial part of its property; (iii) make an assignment for the benefit of creditors; or (iv) be unable generally to pay its debts as they become due;
- (v) an involuntary petition shall be filed or an action or proceeding otherwise commenced seeking reorganization, arrangement or readjustment of the Lessee's debts or for any other relief under the Federal Bankruptcy Code, as amended, or under any other bankruptcy or insolvency act or law, State, Provincial or Federal, Canadian or U.S., now or hereafter existing; or a receiver, assignee, liquidator, sequestrator, custodian, trustee or similar officer for the Lessee or for all or a substantial part of its property shall be appointed involuntarily; or a warrant of attachment, execution or similar process shall be issued against any substantial part of the property of the Lessee, and any of such events shall continue for sixty (60) days undismissed and undischarged;
- (vi) the Lessee shall file a certificate of dissolution under applicable law or shall be liquidated, dissolved or wound-up or shall commence or have commenced against it any action or proceeding for dissolution, winding-up or liquidation, or shall take any corporate action in furtherance thereof; or
- (vii) levy upon, seizure, assignment, or sale of any Car, or the eminency of such an event.

(b) Upon the occurrence of any event of default, Lessor may, at its option, terminate this Lease Agreement by notice in writing to Lessee (which shall not release Lessee from any obligations incurred through such date or from thereafter paying rentals upon the Cars until they are returned to Lessor). In such an event, Lessor may proceed by any lawful means to recover damages for Lessee's breach including, but not limited to, lost rentals,

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transportation and remarketing costs, reasonable attorney's fees and court costs and other expenses; and to take possession of the Cars wherever they are located free and clear of Lessee's interest. All remedies of Lessor under this Lease shall be cumulative.

10. INDEMNITIES.

(a) Subject to the provisions of paragraph 10(b) below, Lessee agrees to indemnify and hold Lessor harmless from and against all losses, damages, injuries, claims and liabilities of whatsoever nature and regardless of the cause thereof arising out of or in connection with the use or operation of the Cars during the term of this Lease Agreement. Lessor shall not be liable for any loss of or damage to any commodities loaded or shipped in the Cars, and Lessee agrees to assume responsibility for and to indemnify and hold Lessor harmless from and against any such loss and damage and from and against any damage to any Car caused by such commodities. The provisions of this paragraph are also subject to the requirements of paragraph 7(b).

(b) When Lessor's employees or agents are on the premises of Lessee to inspect any of the Cars or records pertaining thereto pursuant to paragraph 5(c) above, Lessee shall bear responsibility for any loss, damages, expenses or injuries, including injuries resulting in death to such persons or their property to the extent that only Lessee, its employees and/or agents cause or contribute thereto.

11. NO WARRANTIES. No warranty express or implied is made by Lessor of the quality of design or manufacture of the Cars. Lessee acknowledges that it inspected the Cars when received and hereby waives any and all claims against Lessor for any damages or injuries to any person or property (including cargo loss) from whatever cause in connection with the use, possession or control of the Cars by Lessee.

12. RETURN OF CAR UPON TERMINATION. Upon termination of this Lease Agreement as to any Car, Lessee shall surrender possession thereof to Lessor within thirty (30) days of receipt of notice of termination in writing from Lessor at (1) any point designated by Lessor on Lessee's trackage, at Lessee's expense; (2) any point designated by Lessor off Lessee's trackage within 500 miles, at Lessee's expense; or (3) any point designated by Lessor off Lessee's trackage, the costs of which incurred in excess of 500 miles off Lessee's trackage to be borne by Lessor. Prior to such return, Lessee, at its expense, shall remove its marking from the Car being returned and shall place thereon such marks as shall be reasonably designated by Lessor. All Cars so returned shall be free of debris and in good working condition, clean, ordinary wear and tear excepted. Lessee shall further provide Lessor sixty (60) days free storage on its trackage for any terminated Car in order to arrange disposal thereof, after which such storage shall be provided at Lessee's customary rates.

13. NOTICES. Any notice required or permitted to be given hereunder shall be given in writing either by telex or by mail, and if mailed, shall be sent, postage prepaid, addressed as follows:

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If to Lessor: ITEL Railcar Corporation
 55 Francisco Street
 San Francisco, CA 94133

If to Lessee: Canadian Pacific, Limited
 Windsor Station
 Montreal, Quebec, Canada H3C 3E4
 Attention: Chief of Transportation

Either party hereto may change the address to which notice is to be mailed by written notice thereof to the other. For a notice sent by telex to the Lessor addressed as noted above, the Lessor's current number is 184179; for a notice sent by telex to the Lessee addressed as noted above, the Lessee's current number is 055-61043.

14. ARBITRATION. The Lease Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada. The parties agree, that if any controversy, dispute or claim shall arise out of this Lease Agreement, its interpretation or breach, the parties hereto shall consult with each other in good faith to settle such controversy, dispute or claim. In the event a settlement cannot be reached within two (2) months after such consultation is commenced, or such consultation is not commenced promptly or is discontinued, and any party hereto shall request that such matter be settled by arbitration, then the matter shall be settled exclusively by arbitration in accordance with the following procedure: the party desiring such reference shall appoint an arbitrator and give notice thereof and of intention to refer to the other party who shall, within 30 days after receipt of such notice, appoint on its behalf an arbitrator, in default of which, an arbitrator on behalf of such other party may be appointed by one of the judges of the Supreme Court of Ontario, upon the application of the party desiring such reference after twenty (20) days, notice to the other party. The two arbitrators so appointed shall select a third and the award of the said three arbitrators or a majority of them made after due notice to both parties of the time and place of hearing the matter referred and hearing the party or parties who may attend shall be final and binding on both parties who expressly agree to abide thereby. In case the two arbitrators first appointed fail to select a third within ten days after they have both been appointed, then the third arbitrator may be appointed by one of the judges of the Supreme Court of Ontario on application of either party after ten days' notice to the other party. In case of the death or refusal or inability to act of any arbitrator or if for any cause the office of any arbitrator becomes vacant, his successor shall be appointed in the same manner as is provided for his appointment in the first instant, unless the parties otherwise agree. Each party shall pay half the cost of and incidental to any such arbitration. All arbitration proceedings shall be held in Toronto, Ontario, Canada and each party agrees to comply with, and abide by, in all respects any decision or award made in any such proceeding.

15. AMENDMENTS. Amendments to this Lease Agreement shall not be effective unless in writing and signed by an authorized representative of both parties hereto.

16. MISCELLANEOUS.

(a) This Lease Agreement shall be binding upon, and inure to the benefit of, the parties hereto, their respective successors and assigns, except that neither party may assign this Lease Agreement or any of their rights hereunder without the prior written consent of the other, except as provided in Section 7 (a).

(b) The waiver of any right accruing to any party by failure of that party to exercise that right in a given instance, or delay in exercising that right, shall not be deemed a waiver of that right in future instances of a similar nature or affect any other right, power or remedy available to that party.

(c) Nothing contained herein shall be construed in any way whatsoever so as to constitute or establish a partnership, joint venture or contract of employment between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed on the day and year first above written.

WITNESS:

ITEL RAILCAR CORPORATION

Howard S. Chelver

By: [Signature]

(Corporate Seal)

Title: President

WITNESS:

CANADIAN PACIFIC LIMITED

By: [Signature]

(Corporate Seal)

Title: President CP Rail

L. G. Lynden
Chief of Transportation

[Signature]
ASSISTANT SECRETARY

EXHIBIT A

Description of Cars:	50-Foot, 70-Ton Class A Boxcars
Door Opening Width:	10-Foot Sliding Doors
Inside Length:	50'6"
Inside Width (Min.):	9'6"
Inside Height (Min.):	10'6"
Number of Cars:	99
Current Road Numbers:	CPAA 208775-208873

STATE OF CALIFORNIA:

COUNTY OF SAN FRANCISCO:

On the 6th day of July, 1987^{8^{at}}, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn, did dispose and say that he is the President of the ITEL RAILCAR CORPORATION, the company in the foregoing Lease Agreement, that one of the seals affixed to the foregoing instrument is the Corporate Seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan
Notary Public

(Seal)

My Commission Expires:



CANADA, PROVINCE OF QUEBEC
DISTRICT OF MONTREAL: SS.:

On the twentieth day of June 1987, before me personally appeared D.J. KEZAR, to me personally known, who being by me duly sworn, did dispose and say that she is an assistant secretary of CANADIAN PACIFIC LIMITED, the company in the foregoing Lease Agreement, that one of the seals affixed to the foregoing instrument is the Corporate Seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Andee Grubben
Notary Public
A notary public in and for
the province of Quebec,
Canada.

(Seal)

My Commission is for life.

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